



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

NOV 03 2015

Keith Kawaoka  
Deputy Director  
Environmental Health Administration  
Hawaii State Department of Health  
1250 Punchbowl St.  
Honolulu, Hawaii 96813

Dear Mr. Kawaoka,

EPA recently became aware of the Hawaii State Department of Health's (DOH) efforts to address administrative challenges to a large number of National Pollutant Discharge Elimination System (NPDES) permits. In discussions with DOH, Hawaii's procedures for addressing permit appeals have not been fully conveyed to EPA. Therefore, EPA is requesting, pursuant to 40 C.F.R. § 123.62(d), DOH provide information describing the administrative process for NPDES permitting and review in Hawaii, including any planned changes to that process. EPA will use this information to determine whether the procedures are consistent with the Clean Water Act and its implementing regulations, or whether an amendment to the November 9, 1974 NPDES program delegation approval may be necessary.

To improve our understanding of DOH's timeframe for addressing the existing permit challenges, we are requesting DOH submit by **November 9, 2015**, a detailed schedule of DOH's plan to expeditiously address the existing NPDES permit challenges, including the actions to be taken and the staff time required.

To facilitate our review of Hawaii's NPDES permitting procedures, we are requesting DOH provide the following by **February 1, 2016**:

1. A supplemental Attorney General's statement, including citations to specific statutes, administrative regulations, and judicial authority. The statement should also describe how Hawaii's procedures for judicial review meet the standard described at 40 C.F.R. § 123.30.
2. A supplemental program description, including an updated explanation of the process to be used when issuing NPDES permits, procedures to be used for administrative appeal of issued NPDES permits and provisions for public notice and involvement throughout the permitting process. The program description should also include a breakdown of staffing, including legal support for the NPDES program, expressed in full time equivalent (FTE).

Further, in order to ensure future program effectiveness and to improve program standardization and transparency, and in accordance with the FY16 CWA 106 grant workplan, we are requesting DOH, by **September 30, 2016**:

1. Revise the zone of mixing application form to clarify necessary information for permit issuance and renewal; and
2. To the extent necessary, propose new or revised administrative rules that describe the NPDES permit appeal process including the time frame for appeal, any limitations on the subject matter of the appeal, status of the permit during the appeal, and public participation in the appeal process; and
3. Provide training to permit writers on Hawaii's administrative process for NPDES permit appeals.

In addition, we recommend DOH:

1. Document and if necessary, submit for public comment, DOH's procedures for implementation of nutrient water quality standards in NPDES permits, and
2. Update, and if necessary, submit for public comment, the *State Toxics Control Program: Derivation of Water Quality-Based Discharge Toxicity Limits for Biomonitoring and Specific Pollutants*, dated April 1989 to reflect DOH's current procedures for implementation of toxics WQS in NPDES permits.

EPA is willing to work with DOH to amend the workplan, as needed to refocus resources towards these priorities and towards addressing the permit challenges.

We look forward to working with you and your team to achieve a mutually agreeable solution that addresses our concerns. If you have questions regarding our request, please contact Nancy Woo at (415) 972-3409 or Elizabeth Sablad at (415) 972-3044.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tomas Torres', with a long horizontal flourish extending to the right.

Tomas Torres  
Director, Water Division